



TC05211

Appeal number: TC/2015/06538

Income Tax – Late Payment Penalty –whether reasonable excuse –Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Ashley Harshak

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 25 April 2016 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal of 30 October 2015 and HMRC's Statement of Case February 2016

DECISION

Introduction

- 5 1. This is an appeal against a first and second Late Payment Penalty imposed under paragraphs 3(2) and 3(3) of Schedule 56 Finance Act (FA) 2009 for the failure to pay tax on time for the year ending 5 April 2014.
- 2.

Background Facts

- 10 2. The Notice to File for the year ending 5 April 2014 was issued to the Appellant on 6 April 2014 with a filing date of 31 October 2014 for a non-electronic return and 31 January 2015 for an electronic return.
3. The Appellant's electronic Return for the year 2013-2014 was received on 15 December 2014. This incurred a Late Penalty Payment of £340.00 for late filing.
- 15 4. The tax liability was £11,867.03 and was due to be paid on or before 31 January 2015. At the penalty date of 3 March 2015 £6,808.03 of the tax liability remained unpaid. Five months after the penalty date of 3 March 2015 £6,808.03 of the tax liability remained unpaid. The tax liability was finally paid in full on 10 November 2015. HMRC issued a notice of penalty assessment on 17 March 2015 in the amount
- 20 of £340 being 5% of the tax unpaid at the penalty date. A further penalty assessment was issued on 14 August 2015 for £340 being 5% of the tax unpaid at the penalty date. These penalties are for late payment.

Appellant's submissions

- 25 5. On 30 March 2015 the Appellant through their Agent (SPW(UK) LLP) appealed on the ground that HMRC had agreed to a payment of deferred capital gains by instalments and therefore the penalties of £340.00 each is not chargeable.
6. The Appellant was offered a review of the decision letter and HMRC carried out a review and issued their review decision on 30 September 2015 stating that HMRC
- 30 did not agree to the request to pay by instalment and HMRC requested dates and amounts of proposed payments before a claim can be considered. Further to make a claim under section 280 TCGA 1992 to pay the liability in instalments the disposal proceeds need to include an amount of the deferred consideration.
7. The Appellant stated that the HMRC's decision is incorrect because section 280
- 35 TCGA 1992 automatically allows a payment by instalments spread over a period of time.

HMRC's submissions

8. HMRC say for a claim under section 280 TCGA 1992 to be considered, full details of the deferred consideration payments have to be submitted in writing to HMRC and this was not done by the Appellant. This absence of information was explained to the Agent of the Appellant in a letter of 9 April 2015.

9. Without the information on deferred consideration, no instalment request can be granted and all the tax remains due and payable by 31 January 2015. The tax was not paid in full by that date and therefore the Late Payment Penalties have been charged correctly.

Conclusion

10. Section 280 TCGA 1992 states that if a consideration is deferred through payment by instalment the vendor can ask to pay the tax by instalment if certain conditions are met. HMRC may request information, including the contract, to establish if the conditions are met. This is explained to the taxpayer in the Capital Gains Manual (CG 14910).

11. There is a requirement to provide information to HMRC and it would appear that one is eligible for the payment in instalments once the information is provided and an agreement reached between the parties.

12. A Taxpayer can apply in writing to pay Capital Gains Tax by instalment in accordance with Section 280 TCGA 1992 and arrangements would be made to pay by instalment where the amount under the contract is being received by instalment. All arrangements for collecting payment by statutory instalments fall within the remit of HMRC who have the responsibility for collecting information, ensuring the statutory conditions are met and processing the claim. When a request to pay by statutory instalments is received, certain questions will be asked by HMRC to confirm whether the statutory instalment condition applies and, if so, agree the tax payments and the statutory due dates.

13. In this matter, these arrangements were not in place and therefore the Taxpayer cannot say they had agreed a Statutory Instalment Payment Plan which allowed the due date for the payment of the tax to be altered.

14. In these circumstances, there is no reasonable excuse and the appeal is therefore dismissed.

15. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

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**DR K KHAN
TRIBUNAL JUDGE**

RELEASE DATE: 28 JUNE 2016